IN THE SUPREME COURT FOR THE UNITED STATES

LEON WEBSTER QUILLOIN, Appellant, vs. ARDELL WILLIAMS WALCOTT and RANDALL WALCOTT, Appellees.	CASE NO. 76-6372 APPEAL FROM THE SUPREME COURT OF THE STATE OF GEORGIA CASE NO. 31643

JURISDICTIONAL STATEMENT

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TABLE OF CONTENTS

INDEX TO JURISDICTIONAL STATEMENT

INDEX TO APPENDICES

TABLE OF AUTHORITIES

STATUTES

JURISDICTIONAL STATEMENT PURSUANT TO RULE 15

INTRODUCTION

Appellant, Leon Webster Quilloin, takes this Appeal from a decision of the Georgia Supreme Court entered January 6, 1977 denying Appellant's objection to the adoption action, Petition for Legitimation, Writ of Habeas Corpus and declaratory and injunctive relief. It is Appellant's contention that the Statutes of the State of Georgia have been unconstitutionally applied to him thereby denying him standing to object to the adoption of his biological child. Appellant submits this statement to show that this Court has jurisdiction of this Appeal and to demonstrate that the questions presented herein are so substantial as to require plenary consideration by this Court.

(A) OPINION BELOW

The opinion and judgment of the Supreme Court of the State of Georgia is as yet unreported. It is attached hereto as Appendix "A".

(B) JURISDICTION

(1)

This action commenced with the filing of the original Petition for Adoption wherein the step-father, Randall Walcott, who had married the biological mother filed his Petition to adopt said Appellant's minor child, Darrell W. Quilloin, then aged 11. The biological mother had given her consent for this adoption pursuant to Ga. Code Ann. §74-403(3). Appellant filed an objection to said adoption as the natural parent of the minor child. The Appellant also filed a Writ of Habeas Corpus to establish visitation rights to said minor child. The Appellant also filed a Petition to Legitimate said child pursuant to Ga. Code Ann. §74-103. That Appellant filed an Amendment to said action after they were consolidated requesting a declaratory judgment that the Statutes of the State of Georgia be declared unconstitutional in their application to the Appellant. That the consolidated action received a hearing on June 23, 1976 before the Honorable Elmo Holt, Judge of the Superior Court of Fulton County, State of Georgia, and the trial court took said case under advisement and on July 12, 1976 entered an Order wherein the trial court cited under Conclusions of Law:

> (1) The child in question being illegitimate, the consent of the mother alone to the adoption is sufficient. See Georgia Laws, 1941, as amended, Ga. Code Ann. §74-403(3); and
>
> (2) The biological father, Leon Webster Quilloin, has no standing to object to the proposed adoption, the mother having the right to possession of the child and she being the only recognized parent with the right to exercise all the paternal powers. Ga. Code Ann. §74-203.

thereby applying said State Statutes to the Appellant.

That section (5) of said Order was amended by an Order of the 21st day of July, 1976 which did not in any manner

change the substance of the Conclusions of Law or findings of fact contained in the original Order entered on July 12, 1976. That a copy of said Order is attached hereto as Appendix "C".

From the entry of said trial court's Order, the Appellant appealed to the Georgia Supreme Court, the highest Appellate Court in the State of Georgia, who by a majority opinion dated January 6, 1977, affirmed the trial court. On January 27, 1976, a rehearing was denied. On February 18, 1977, Appellant filed his Notice of Appeal with the Clerk of the Supreme Court of the State of Georgia wherein Appellant seeks to appeal the decision of the Supreme Court of Georgia to this Honorable Court. That a copy of said Notice of Appeal is attached hereto as Appendix "D".

The jurisdiction of this Court on Appeal is invoked pursuant to 28 U.S.C. §1257(2) on the grounds that the validity of a Statute of the State of Georgia is repugnant to the Fourteenth Amendment to the Constitution of the United States.

STATUTES INVOLVED

The text of the relevant statutes involved is as follows: Georgia Laws, 1943, page 538, as amended, Ga. Code Ann. §74-203, Georgia Code (3028):

> "The mother of an illegitimate child shall be entitled to the possession of the child, unless the father shall legitimate him as before provided. Being the only recognized parent, she may exercise all the paternal power."

Georgia Laws, 1941, page 300, as amended, Ga. Code Ann. §74-403:

> "(1) Except as otherwise specified in the following subsections, no adoption shall be permitted except with the written consent of the living parents of a child. Said consent, when given freely, voluntarily, may not be revoked by the parents as a matter of right. In the case of a child 14 years of age, or over, the consent of such child also shall be required, and must be given in writing in the presence of the court."
>
> "(2) Exemption where child abandoned or parental custody terminated.--Consent of a parent shall not be required where a child has been abandoned by such parent, or where such parent of a child cannot be found after a diligent search has been made, or where such parent is insane or otherwise incapacitated from giving such consent and the court is of the opinion that the adoption is for the best interest of the child, or where such parent has surrendered all of his or her rights to said child to a licensed child-placing agency, or to a court of competent jurisdiction for adoption, or to the Department of Human Resources through its designated agents, or where such a parent has had his or her parental rights terminated by order of

a juvenile or other court of competent jurisdiction, or where such parent is dead. Where a decree has been entered by a superior court of this State or any other court of competent jurisdiction of any other State ordering a parent to support a child and such parent has wantonly and willfully failed to comply with the order for a period of 12 months or longer, the consent of such parent shall not be required and the consent of the other parent alone shall suffice in any proceedings for adoption relativ to such child."

"(3) Illegitimate children.--If the child be illegitimate, the consent of the mother alone shall suffice. Such consent, however, shall not be required if the mother has surrendered all of her rights to said child to a licensed child-placing agency, or to the Department of Human Resources."

"(4) Guardian.--If the child has a guardian of its person, the consent of such gardian shall be required, or if the child has been surrendered or committed by court order to a licensed child-placing agency, the consent of such agency shall be required."

"(5) Minor parents.--The parental consent, when required by this section, may be given by the natural parents or parent of the

child sought to be adopted irrespective of whether such natural parent, or either, or both of them, have arrived at the age of 21 years. The parental consent given by the minor natural parents shall be as binding upon them as if such parents were in all respects sui juris."

Only Section (3) of Ga. Code Ann. §74-403 is in issue.

CASES BELIEVED TO SUSTAIN THE JURISDICTION

Stanley vs. Illinois, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed. 551 (1971); Glona vs. American Guarantee and Liability Insurance Company, 391 U.S. 73, 75-76, 88 S.Ct. 1515, 1516, 20 L.Ed.2d 441 (1968); Levy vs. Louisiana, 391 U.S. 68, 71-72, 88 S.Ct. 1509, 20 L.Ed. 436 (1968), Miller vs. Miller, 504 F.2d 1064 (9th Circuit, 1974).

(C) QUESTIONS PRESENTED BY THIS APPEAL

(1)

Do the provisions of Georgia Laws, 1943, page 538, as amended, Ga. Code Ann. §74-203, Georgia Code (3028), and Georgia Laws, 1941, page 300, as amended, Ga. Code Ann. §74-403(3) violate the due process and equal protection rights of the Appellant under the Fourteenth Amendment to the United States Constitution by creating a presumption that distinguishes and burdens all unwed fathers based upon the legal rather than the factual concept of fathers, thereby presuming that all unwed fathers are unfit to have total or partial custody of their minor children and thereby deny said unwed fathers standing to object to the adoption of their minor biological children while said basic adoption statutes of the State of

Georgia give legal fathers the absolute right of veto over any adoption of their minor children so long as they have not abandoned the child?

(D) STATEMENT OF FACTS AND PROCEEDINGS BELOW

This action commenced with the filing of the original Petition for Adoption wherein the step-father, Randall Walcott, filed his petition to adopt the minor child, Darrell W. Quilloin, aged 11. The step-father was married to the Appellee, Ardell Williams Walcott, and she gave her consent to said adoption of her minor child, Darrell W. Quilloin, who had been born to her and the Appellant, Leon Webster Quilloin. R-1. That the Appellant was admitted to be the biological father of said child, but was never served with said Petition for Adoption, T-67, but was notified of the filing of same by the caseworker for the Department of Human Resources. T-65. That the Appellant filed an objection to said adoption as natural parent of the minor child, R-9. That Appellant also filed a Writ of Habeas Corpus establishing visitation rights to said minor child, R-16. That Appellant also filed a Petition to Legitimate said minor child pursuant to Ga. Code Ann. §74-103, R-20. That by consent of counsel and the Order of the trial court, all actions were consolidated for trial to be referred to thereafter as IN RE: DARRELL WEBSTER QUILLOIN. (This Order was not made a part of the Appellate record). That Appellant also filed an Amendment to said consolidated action raising the issue of the constitutionality of the application of Georgia Code (3028), Georgia Code of 1933, as amended, Georgia Laws, 1943, page 538, as amended,

Ga. Code Ann. §74-203, to this case. R-24. That the Appellant also filed a second amendment raising the issue of the constitutionality of the application of Ga. Code Ann. §74-403(3), Georgia Laws, 1941, page 301, as amended. R-27. That the above-styled action was tried on June 23, 1976 before the Honorable Elmo Holt, and the trial court took said case under advisement and on July 12, 1976, entered an Order wherein the trial court cited under Conclusions of Law: (1) The child in question, being illegitimate, the consent of the mother alone to the adoption is sufficient. (Georgia Laws, 1941, as amended, Ga. Code Ann. §74-403(3). (2) The biological father Leon Webster Quilloin, has no standing to object to the proposed adoption, the mother having the right to possession of the child and she being the only recognized parent with the right to exercise all the parental power. (Ga. Code Ann. §74-203). That the trial court thereby applyed said laws to the Appellant. R-33. That section (5) of the Order entered on July 12, 1976 was amended by an Order of the 21st day of July, 1976, which did not in any manner change the Conclusions of Law or findings contained in the Order of July 12, 1976. R-38.

That Appellant appealed from said trial court's ruling to the Georgia Supreme Court.

That on January 6, 1977 the majority of the justices of the Supreme Court affirmed the ruling of the trial court. That by way of explanation of Appendix "A", Chief Justice Nichols' name is typed among the justices that dissented, however, Chief Justice Nichols, before publication of the official decision, struck his name from the dissent, and

thereby joined the majority that affirmed the ruling of the trial court.

That Appellant filed a Motion for Rehearing which was denied on January 27, 1977, however, Justice Ingram then joined Justices Undercofler and Gunter in the dissenting opinion. See Appendix "B" (rehearing card). The final result was therefore a 7 to 3 vote against the Appellant. Therefore, the present status of Georgia decisions, like the decisions coming out of the other highest Appellate courts of the United States are as split as they possibly can be.

The statutory provision of the State of Georgia was co stitut onally questioned, reviewed and passed upon by the trial cou , and therefore, the nature of this case clearly comes under the statutory framework of 28 U.S.C. 1257 (2).

(E) ARGUMENT SUPPORTING POSITION THAT THIS APPEAL PRESENTS SERIOUS AND SUBSTANTIAL FEDERAL QUESTIONS AND THEREFORE THIS COURT SHOULD ACCEPT JURISDICTION AND GRANT PLENARY CONSIDERATION OF THE MERITS

The Statutes in question have in this case deprived the Appellant of due process of the law and equal protection of the law legally. Factually, said Statutes have deprived the Appellant and the Appellant's biological child of each other. This alone should create a substantial federal question for resolution by this Court. The status of other unwed and therefore illegal fathers, however, also needs the protection of this Court's construction of the Georgia Adoption Laws and similar laws from other jurisdictions. The present legal construction confusion that is rampart in the Georgia Supreme Court on this issue is not peculiar to Georgia.

Georgia as hereinbefore stated has upheld the constitutionality of the Statutes in question merely by the change of mind of the Chief Justice of the Supreme Court of the State of Georgia and his switch from the dissent to the affirmation of the trial court's decision. Other courts have routinely applied the Stanley rationale to the adoption setting in cases identical to this one. See Miller vs. Miller, 504 F.2d 1067 (9th Circuit, 1974); Catholic Charities vs. Zalesky, 232 N.W.2d 539 (Iowa, 1975); In re M., 321 A.2d 19 (Vermont), 1974; State ex rel. Lewis vs. Lutheran Social Services, 207 N.W.2d 826 (Wisc., 1973); People ex rel. Slawek vs. Covenant Children's Home, 284 N.E.2d 291 (Ill., 1972).

This case should clearly be controlled by this Court's ruling and rationale contained in Stanley vs. Illinois, 405 U.S. 645, 92 S.Ct. 1208; 31 L.Ed.2d 551 (1971). Stanley held that an unwed father has due process rights and that he is denied equal protection because all other parents except unwed fathers are entitled to due process. Stanley also held that it is not reasonable on public policy grounds to treat unwed fathers differently and thereby deprive them of their rights to equal protection under the law as required by the Fourteenth Amendment to the United States Constitution. This Court held in Stanley that Stanley's due process rights stemmed from the biological fact of paternity.

By its ruling, the Georgia Supreme Court has now ruled that as a matter of public policy the group of children who are illegitimate are distinguishable from legitimate children and married or divorced fathers are distinguishable from unwed fathers. This is contrary to the argument in Stanley (page 654, 92 S.Ct., page 1214). The Georgia Supreme

Court has also held that as a matter of public policy that most unmarried fathers are unstable and neglectful parents. This is also contrary to the arguments of Stanley. (Page 661, 92 S.Ct. page 1218 N 1).

The Georgia Supreme Court has therefore approved this State's ability to draw legal lines as it chooses. This Court has ruled that the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution does not permit this. Glona vs. American Guarantee and Liability Insurance Company, 391 U.S. 73, 75-76, 88 S.Ct. 1515, 1516, 20 L.Ed.2d 441 (1968).

This Court has also ruled that illegitimate children cannot be discriminated against merely because of their birth by declaring unconstitutional a State statute in Louisiana that denied natural but illegitimate children a wrongful death action for the death of their mother. Levy vs. Louisiana, 391 U.S. 68, 71-72, 88 S.Ct. 1509, 20 L.Ed.2d 436 (1968). This Court has also ruled that an illegal unwed father cannot as a matter of law be presumed to be neglectful and unfit. This Court held in Stanley vs. Illinois, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 in answer to this very basic question:

> "Is a presumption that distinguishes and burdens all unwed fathers constitutionally repugnant?"

That as a matter of due process of law, Stanley was entitled to a hearing on his fitness as a parent before his children were taken away from him, and that by denying him a hearing and extending it to all other parents whose custody of their children is challenged, the State

denied Stanley the equal protection of the law as guaranteed by the Fourteenth Amendment.

The Respondent in this Appeal may argue that the Appellant, unlike Stanley, was afforded notice and hearing, however, Appendix "C" the ruling of the trial court, clearly held that the Appellant had no standing to object to the adoption of his biological child under Georgia law, and therefore, the notice (which the Appellant really did not get in legal form) and the hearing was meaningless.

The statutory framework of the Georgia Adoption Statute, Ga. Code Ann. §74-403 provides for consent as a condition precedent to the adoption of a minor child by the parent unless the parent has failed and refused to abide by a superior court order for twelve months or has abandoned the child. If this same criterion were applied to the Appellant in this case, he would have an absolute right of veto to the adoption since the Appellant never abandoned this child. The Appellant did, however, give the minor child his name by signing the birth certificate at his birth and the minor child in this case has always carried the name of the Appellant and was so named in the adoption action "Darrell Webster Quilloin".

The irony of this case is that had the Appellant not given the minor child his name at birth, but had subsequently legitimated said child in accordance with Georgia law prior to the filing of the adoption action, then under Georgia law he would have acquired the right of veto over the adoption in the same manner as a married parent. The Georgia Supreme Court has however, held that this legitimation action must

be filed prior to the adoption.

> "This consent given at a time when she was the only recognized parent, could not be rendered negutory by Smith's subsequent legitimation." See Ga. Code Ann. §74-203. Smith vs. Smith, 224 Ga. 442 (162 S.E.2d 379).

The Georgia Legitimation Statute, Ga. Code Ann. §74-103, merely establishes the right of the child to inherit from the father and the father only. It does not vest in the minor child the full parent-child relationship, and the child cannot inherit through the father. Hicks, Administrator, et al. vs. Smith, et al., 94 Ga. 809, 22 S.E. 153. The child's name was already Quilloin, therefore, the only beneficial effect the Court's legitimation action could have accomplished would have been to allow the child to inherit from the estate of his father. This, however, could have been corrected by non-court proceedings by simply drafting a Will. Therefore, the present status of Georgia law is that the Appellant has been punished for not taking legal action which was totally unnecessary in the first place. This is truly an absurd legal entanglement that counsel for the Appellant cannot adequately explain to his client. The Social Security Act has avoided this illogical position by the terms of Section 216(h)(2) which allows a recognized child to draw from the account of his biological father.

> "Section 216(h)(2) of the Social Security Act...(1) had acknowledged in writing that the Applicant is his son or daughter."

Counsel for the Appellant does not wish to bury his head in the sand and ignore In re: Adoption of Malpicca-Orsini, 36 N.Y.2d 568, 370 N.Y.S.2d 511, 331 N.E.2d 486 (1975),

Appeal dismissed for want of a substantial federal question, 96 S.Ct. 765 (1976). This case is cited at page 5 of the majority decision in this case as its authority for its holding in this case. Therefore, this Court's failure to rule was taken as substantive precedent for the denial of the fundamental rights of the Appellant to his biological child or to at least see and visit with his biological child in addition to the rights of the child to visit with the father. The child testified he would like to visit with the Appellant.

CONCLUSION

That if this Court desires to abandon the rationale of Stanley, it should do so in an affirmative manner so that the State legislators of the United States may promulgate adoption statutes consistent with the rationale of Stanley or the majority decision in this case. The rationale of Stanley is good law and should be applied for the benefit of the Appellant in this case and all those similarly situated. The constitutionality of the Georgia Statutes in question if not ruled upon by this Court will undoubtedly be retested in Georgia courts in the immediate future, and presuming the death, retirement or election loss of the Justices in the majority in this case, the results reached in a new case can reasonably be presumed to be totally different since the margin of victory and defeat for both sides of this case is so narrow. In Miller vs. Miller, 504 F.2d 1067 (1974) at 1068; the Solicitor General of the State of Oregon conceded that the Statute in question (that was identical to Statute here questioned) was out of harmony with the Federal Constitution.

The Attorney General for the State of Georgia refuses to do this. Therefore, this Court must note jurisdiction in this case and give plenary consideration to once and for all dissolve this continuing conflict concerning basic human rights and responsibilities.

Respectfully submitted this 8th day of March, 1977.

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In the Supreme Court of Georgia

Decided: JAN 06 1977

31643. QUILLOIN v. WALCOTT

HILL, Justice.

The constitutional rights of the natural father of an illegitimate child are presented here for review. After the child's stepfather filed a petition for adoption, the natural father sought to oppose the adoption, to legitimate the child and to gain visitation rights. The trial court refused to declare Code Ann. § 74-203, placing all parental power in the mother of an illegitimate, and Code Ann. § 74-403 (3), requiring only her consent for such a child's adoption, unconstitutional. The adoption was granted and the legitimation petition and visitation rights were denied. The natural father appeals.

The child, now twelve, was born in 1964. He has lived with his maternal grandmother or his mother all of his life, although he has visited with his father on occasions. The primary support for the child has been from his mother or his maternal grandparents. His father has provided some support and has given some presents from time to time.

In 1967 the stepfather and the mother were married, and on March 24, 1976, he filed his petition to adopt the child. The

mother's consent to such adoption was attached to the petition. The natural father made no effort to legitimate the child or to obtain visitation rights until after the stepfather filed the adoption petition.

On appeal the natural father argues that Code Ann. §§ 74-203 and 74-403(3) are unconstitutional.

We begin by looking at the statutory scheme of Title 74, Parent and Child, in its entirety. Sections 74-101 through 74-112 are concerned with legitimate children--what children are legitimate, how illegitimate children can be legitimated, etc. Code Ann. § 74-108, entitled "Parental Power" states how a father's parental power shall be lost: " . . . 2. Consenting to the adoption of the child by a third person. 3. Failure of the father to provide necessaries for his child. . . . 5. Consent to the marriage of the child. . . ." Sections 74-201 through 74-205 deal with illegitimate children. Section 74-203, which is under attack, states the rights of the mother of an illegitimate child: "The mother of an illegitimate child shall be entitled to the possession of the child, unless the father shall legitimate him as before provided. Being the only recognized parent, she may exercise all the paternal (sic) power." Georgia law provides for two ways by which a child can be legitimated by the father: Under § 74-101 by the marriage of the natural father and the mother and the recognition of the child as his, and under § 74-103 by a petition for legitimation.

With the classification of the children as legitimate and illegitimate in mind, we turn to §§ 74-401 through 74-424 involving adoption of children (§ 74-301 et seq. were repealed in 1973). Section 74-403 concerns the consent to adoption required of parents or guardians. Subsection (1) states that no adoption shall be permitted except with the written consent of the living parents of a child. Subsection (2) provides for an exception where the child has been abandoned or parental custody has been terminated. Subsection (3), which is under attack, provides that "If the child be illegitimate, the consent of the mother alone shall suffice."

The equal protection clause of the Fourteenth Amendment requires that all persons be treated alike under similar circumstances and conditions. It does not, however, prevent classification if the distinction is based on valid state interests. In Labine v. Vincent, 401 U. S. 532 (1971), the United States Supreme Court held that Louisiana's intestate succession laws that bar an illegitimate child from sharing equally with legitimate children are not violative of due process or equal protection.

That is to say that a state may make valid classifications of children, of legitimate and illegitimate, if based upon valid state interests.

Georgia has concern for the well-being of all its children. To further the protection and care of its children, Georgia favors and encourages marriage and child rearing in a family relationship. In the case of an illegitimate child, there is no marriage and, most frequestly, there is no father to raise the child; instead there is only a mother. It is reasonable for Georgia to place full responsibility for the illegitimate child on the parent who is present. This placing of full parental power in the mother is consistent with the public policy favoring marriage and the family because the father can choose to join the family, Code Ann. § 74-101, or can petition to legitimate the child, § 74-103.

In the usual case, if the mother of an illegitimate child decides not to raise the child herself and consents to adoption, the state's interest in promoting the family as an institution for child rearing is served since the child will be placed with the adopting family. If the consent of the natural father were also required he might refuse without accepting the responsibility of fatherhood, and the state could be required to sever his relationship before the adoption could proceed. In addition, since the father has already shown his lack of interest by his failure to legitimate the child, there would be a very real danger of profit seeking by the father in order to secure his consent to the adoption. Georgia's interest in seeing to the needs of children is served by the statutory scheme. When the illegitimate child's mother consents to adoption, the state and the mother's interest coincide and the child can be placed with a family.

The state's interest is even stronger under the facts of this case. For eleven years the natural father took no steps to legitimate the child or support him. Yet when the stepfather, married to the child's mother, wishes to adopt the boy and accept responsibility for him, the natural father suddenly opposes legal recognition of this family unit.

We find that neither Code Ann. § 74-203 nor § 74-403(3) deny the natural father equal protection of the laws.[1/]

The natural father contends that the Georgia statutes take away his parental rights without due process of law. He relies on Stanley v. Illinois, 405 U. S. 645 (1971). In Stanley, the Supreme Court held an Illinois statutory scheme unconstitutional which required a hearing and proof of unfitness before the state could assume custody of a child of married or divorced parents or

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/1/ See In re Adoption of Malpica - Orsini, 36 NY2d 568, 370 NYS2d 511, 331 NE2d 486 (1975), appeal dismissed, 96 SC 765 (1976).

unmarried mothers, yet required no such showing before separating a child from an unwed father. In Stanley, the father was a de-facto member of the family unit,[2/] and the mother had died. Either of these factual differences would be sufficient to distinguish Stanley from the case before us. We find that Stanley is not controlling and that Code Ann. §§ 74-203 and 74-403(3) violate neither equal protection nor due process.

Judgment affirmed. All the Justices concur except Nichols, C.J., Undercofler, P.J., and Gunter, J., who dissent.

/2/ Georgia recognizes common law marriages but Illinois does not.

31643. QUILLOIN v. WALCOTT.

UNDERCOFLER, Presiding Justice, dissenting.

The majority summarily disposes of the due process issue in Stanley v. Illinois, 405 U. S. 645 (1971) on the facts of that case. It then disposes of the equal protection issue on the basis that it is reasonable to treat unwed fathers differently because state public policy favors adoption. The court thus misconstrues Stanley. Stanley holds that an unwed father has due process rights and that he is denied equal protection because all other parents except unwed fathers are entitled to due process. "[A]s a matter of due process of law, Stanley was entitled to a hearing on his fitness as a parent before his children were taken from him and that, by denying him a hearing and extending it to all other parents whose custody of their children is challenged, the State denied Stanley the equal protection of the laws guaranteed by the Fourteenth Amendment." Stanley v. Illinois, supra, p. 649. (Emphasis supplied.)

The majority dismisses the due process right as merely a de facto right, which accrued from the fact that Stanley had intermittently lived with the mother and his children over an eighteen year period.[1] On the contrary, the Supreme Court held that Stanley's due process rights stemmed from the biological fact of paternity.[2] This is made clear in a footnote: "If unwed fathers, in the main, do not care about the disposition of their children, they will not appear to demand hearings. If they do care, . . . Illinois would admittedly at some later time have to afford them a properly focused hearing in a custody or adoption proceeding." Stanley v. Illinois, supra, p. 675, n. 9. (Emphasis supplied.) The Court even approved notice by publication to "All whom it may Concern," where the father was unknown or had disappeared. See footnote 9, supra. Thus the Stanley majority intended to recognize the due process rights of all natural fathers, not merely those who live with their families.

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[1] The children were not then living with the father, but had been left by the father with another couple. Stanley v. Illinois, supra at p. 663, n. 2.

[2] See also Gomez v. Perez, 409 U. S. 535 (1973) (unacknowledged illegitimates have a cause of action against their natural fathers for support); Glona v. American Guarantee Co., 391 U. S. 73, 75-76 (1968).

The majority, I think, also misconstrues the basis of the equal protection claim in Stanley. I agree with the majority that the State has a rational basis in promoting the legitimation of the children of unwed fathers. Further, I know of no public policy of this State favoring adoption by strangers over being raised by one's own father. The crux of the claim in Stanley, however, is that because an unwed father has due process rights in his children, it is a denial of equal protection to treat him differently than other parents.[3] Thus based on the due process right, which the majority does not accept, the equal protection claim is not so easily dismissed on state public policy grounds. On this distinction, I would hold that Code Ann. § 74-403 (3) denies unwed fathers due process and the equal protection of the laws as was held by the Supreme Court in Stanley.

This position is fortified by the remand of two cases to their respective state courts in light of Stanley. Rothstein v.

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[3] "'To say that the test of equal protection should be the 'legal' rather than the biological relationship is to avoid the issue for the Equal Protection Clause necessarily limits the authority of a state to draw such 'legal' lines as it chooses.' Glona v. American Guarantee Co., 391 U. S. 73, 75-76 (1968)." Stanley v. Illinois, supra, p. 652.

Lutheran Social Services, 405 U. S. 1051 (1971), vacating and remanding, State ex rel Lewis v. Lutheran Social Services, 47 Wis2d 420 (178 NW2d 56) (1970); Vanderlaan v. Vanderlaan, 405 U. S. 1051 (1971), vacating and remanding, 126 Ill. App2d 410 (262 NE2d 717) (1970). On remand, the Wisconsin Supreme Court held, in a case similar to this one, that an adoption which had taken place without terminating the rights, or without the consent, of the unwed father was invalid in light of Stanley. The Wisconsin Court said, "The Supreme Court decided two things: (1) that the denial of a natural father's parental rights to a child born out of wedlock based on mere illegitimacy violated his constitutional right to equal protection of the laws, and (2) that the termination of a natural father's parental rights to a child born out of wedlock without actual notice to him, if he was known, or constructive notice, if unknown, and without giving him the right to be heard on the termination of his rights denied him due process of law." State ex rel Lewis v. Lutheran Social Services, 59 Wis2d 1 (207 NW2d 826, 828) (1973). Likewise, the Appellate Court of Illinois on the remand of Vanderlaan v. Vanderlaan, 9 Ill. App3d 260 (292

NE2d 145) (1972), interpreted Stanley as having recognized that unwed fathers have protectable rights in their children. See also Miller v. Miller, 504 F2d 1068 (9th Cir., 1974); Willmot v. Decker, 541 P2d 13 (Ha., 1975); Forestiere v. Doyle, 310 A2d 607 (Conn., 1973); State ex rel Lewis v. Lutheran Social Services, supra; Slawek v. Covenant Children's Home, 284 NE2d 291 (Ill., 1972); Lee v. Dept. of Social Services, 337 NYS2d 102 (1972); In re Harp, 495 P2d 1059 (Wash., 1972); In re Brennan, 134 NW2d 126 (Minn., 1965). But see, In re Adoption of Malpica-Orsini, 36 NY2d 568, 370 NYS2d 511 (331 NE2d 486)(1975), appeal dismissed, 96 SC 765 (1976).

2. I concur with the majority that Code Ann. § 74-203 arbitrarily placing the parental power of the illegitimate child in the mother, rather than in the father as for legitimate children, has a rational basis in state policy. It is clear from Labine v. Vincent, 401 U. S. 532 (1971) that the State may make such determinations of family relationships. This section may be distinguished from Code Ann. § 74-403 (3) because it does not purport to deprive the other parent of all parental rights.

Because of my position stated in division 1, however, I must dissent.

I am authorized to state that Justice Gunter joins this dissent.

Clerk's Office, Supreme Court of Georgia

DEAR SIR: ATLANTA 11/22/77

The motion for a rehearing was denied today:

Case No. 31643. Quilloin v. Walcott

Undercofler, P.J., Hunter & Ingram, JJ. dissent

Yours very truly,

MRS. JOLINE B. WILLIAMS, Clerk

"B"

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

IN RE: APPLICATION OF RANDALL WALCOTT FOR ADOPTION OF CHILD	)	ADOPTION CASE NUMBER 8466
LEON WEBSTER QUILLOIN, Plaintiff	)	CIVIL ACTION NO. C-18672
V.	)	
ARDELL WILLIAMS WALCOTT, Defendant, Respondent	)	
LEON WEBSTER QUILLOIN, Plaintiff	)	CIVIL ACTION NO. C-18673
V.	)	
ARDELL WILLIAMS WALCOTT, Defendant, Respondent	)	

ORDER

The above-stated adoption matter coming on regularly to be heard; and a Petition for Legitimation of said child, a Habeas Corpus action for visitation rights and two amendments thereto attacking the constitutionality of certain Georgia laws and seeking a declaratory judgment and injunction, all having been filed subsequent to the filing of the original petition for adoption; and the Court hearing all the said matters on a consolidated record for the purpose of allowing the biological father (respondent in the adoption matter and movant in the other said matters) to present any record with respect to any issue or other thing upon which he desired to be heard, including his fitness as a parent; and, after hearing all the evidence and arguments of counsel, together with consideration of briefs filed in all said matters, the Court finds as follows:

"C"

(1) Darrell W. Quilloin, a male, minor child, born December 25, 1964, now eleven (11) years of age; is an illegitimate child of Ardell William Walcott (mother) and Leon Webster Quilloin (father). The said mother and father are not and never have been married.

(2) The mother has had [illegible] possession and custody of said child and the child has lived solely or principally with the mother or maternal grandparents all of the child's life, although the child has visited with the father and the paternal grandparents on many occasions.

(3) The father has provided support for the child irregularly, in the form of medical attention, food, clothing, gifts and toys from time to time.

(4) The principal or primary source of support, on a regular basis, has been the mother or the maternal grandparents.

(5) Overall, the child has been well cared for and has never been in an abandoned or deprived condition.

(6) The mother is now married to Randall Walcott and has been so married since September 16, 1967, and there is a seven-year old child as a result of that marriage.

(7) The mother has recently declined to allow visitation by the father and has declined to accept support by way of toys, gifts, etc., for the child because of disruption of the family and disparity in the treatment of this child and the seven-year old half-brother in the home, which causes problems within the family.

(8) The [illegible] child, Randall Walcott (the mother's husband), filed his petition for adoption of the child on March 24, 1976, and the mother consented to such adoption in writing, same being attached to said petition.

(9) The child, though only eleven years of age, expresses his desire to be adopted by the step-father, Randall Walcott, to change his name to Walcott, as well as his desire to continue to visit the biological father, Leon Webster Quilloin, on occasion.

(10) The biological father made no effort to legitimate the child and filed no petition for legitimation until after the aforesaid petition for adoption was filed by Randall Walcott.

(11) The biological father made no effort to obtain regular visitation rights and filed no Habeas Corpus action to establish visitation privileges until after the aforesaid petition for adoption was filed by Randall Walcott.

(12) The biological father is a single man; he is not seeking custody of the child; he objects to the adoption by Randall Walcott and he seeks visitation rights.

(13) The mother objects to the granting of the legitimation and she objects to visitation rights by the biological father.

(14) The proposed adoptive father, Randall Walcott, is a fit and proper person to adopt the child.

(15) The proposed adoption of the child by Randall Walcott is in the best interests of said child.

(16) The proposed legitimation of the child by Leon Webster Quilloin is not in the best interests of the child at this late date, nor is the granting of the Habeas Corpus relief seeking visitation rights in the best interests of the child, and both should be denied.

CONCLUSIONS OF LAW

(1) The child in question, being illegitimate, the consent of the mother alone to the adoption is sufficient. (Georgia Laws 19[illegible], Georgia Code 74-403(3)).

(2) The [illegible] Leon Webster Quilloin, has no standing to object to the proposed adoption, the mother having the right to possession of the child and she being the only recognized parent with the right to exercise all the paternal power. (Georgia Code 74-203).

IT IS THEREFORE CONSIDERED, ORDERED AND ADJUDED as follows:

(1) That the final order of adoption be entered on the petition of Randall Walcott, and the Court will enter such order in Case Number 8466 contemporaneously herewith.

(2) That the petition for legitimation filed by Leon Webster Quilloin, Case Number C-18673, be and the same hereby is denied.

(3) That the Writ of Habeas Corpus establishing visitation rights filed by Leon Webster Quilloin, Case Number C-18672, be and the same hereby is denied.

(4) That the first amendment filed by Leon Webster Quilloin, to Case Numbers C-18672, C-18673, and 8644, attacking the constitutionality of Georgia Code Section 74-203 (3028) as amended; Georgia Laws 1943, Page 538, as amended; and Georgia Laws 1856 as amended, be and the same hereby is denied and the Court declines to hold said laws and said Code Section unconstitutional for any of the reasons stated.

(5) That the second amendment filed by Leon Webster Quilloin to Case Numbers C-18672, C-18673, and 8466, seeking a declaratory judgment declaring Georgia Code Section 74-203 (3028) to be unconstitutional, be and the same hereby is denied and the Court declines to declare said Code Sections and any portions thereof and said laws unconstitutional for any of the reasons stated.

(6) That [illegible] and Ardell Williams [illegible] Leon Webster Quilloin to the aforesaid actions be and the same hereby is denied, [illegible] of such injunction [illegible] holds.

This 12 [illegible], 1976.

Edwin Eldt

JUDGE, SUPERIOR COURT
ATLANTA JUDICIAL CIRCUIT

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

IN RE: APPLICATION OF RANDALL WALCOTT FOR ADOPTION OF CHILD	)	ADOPTION CASE NUMBER 8466
LEON WEBSTER QUILLOIN, Plaintiff V. ARDELL WILLIAMS WALCOTT, Defendant, Respondent	)	CIVIL ACTION NO. C-18672
LEON WEBSTER QUILLOIN, Plaintiff V. ARDELL WILLIAMS WALCOTT, Defendant, Respondent	)	CIVIL ACTION NO. C-18673

AMENDED ORDER

The Order passed in the above-stated case on July 12, 1976 is hereby amended by striking paragraph five of said Order and inserting in lieu of the said stricken paragraph the following:

"(5) That the second amendment filed by Leon Webster Quilloin to Case Numbers C-18672, C-18673, and 8466, seeking a declaratory judgment declaring Georgia Code Section 74-203 (3028) and Georgia Code Section 74-403(3), Georgia Laws 1941, page 301, as amended, to be unconstitutional, be and the same hereby is denied, and the Court declines to declare said Code Sections and any portions thereof and said laws unconstitutional for any of the reasons stated."

The remaining portions of said Order, including any findings of facts and conclusions of law, are continued in full force and effect.

This 21 day of July, 1976.

Edwin Hoot

JUDGE, S.C., A.J.C.

IN THE SUPREME COURT OF THE STATE OF GEORGIA

LEON WEBSTER QUILLOIN,	)	
	)	
Appellant,	)	
	)	GEORGIA SUPREME COURT
vs.	)	
	)	CASE NO. 31643
ARDELL WILLIAMS WALCOTT	)	
	)	
and RANDALL WALCOTT,	)	
	)	
Appellees.	)	

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES PURSUANT TO RULE 10

PART I. (A)

Notice is hereby given that Leon Webster Quilloin, the Appellant above mentioned, hereby appeals to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of Georgia entered on January 27, 1977 wherein the majority of said court denied Appellant's Motion for Rehearing wherein Justices Undercofler, P. J., Gunter and Ingram, J. J. dissented. That Appellant also appeals to the Supreme Court of the United States from the initial decision in the above-styled case that was decided and entered on January 6, 1977 that affirmed the ruling of the trial court entered on July 12, 1976 and amended on July 21, 1976 in consolidated cases numbered 8466, C-18673 and C-18672 wherein said trial court entered a final order of adoption in Case No. 8466 and wherein said trial court denied Petitioner's Petition for Legitimation filed in Case No. C-18673 and wherein said trial court denied Appellant's Application For Writ of Habeas Corpus in Case No. C-18672, and wherein the trial court applied and declined to hold Georgia Laws, 1943, page 538, as amended, Ga. Code Ann. §74-203, Ga. Code (3028) unconstitutional, and wherein said trial court applied and declined to hold un-
constitutional Ga. Code Ann. §74-403, Georgia Laws, 194[illegible]
[illegible], as amended

This appeal is taken pursuant to 28 U.S.C. 1257(2) in that a question involving the validity of a statute of the State of Georgia has been raised on the grounds that said statutes are repugnant to the Constitution of the United States of America, and the decision of the State Court was in favor of its validity.

PART II. (B)

The Clerk of the Supreme Court of the State of Georgia shall transmit the entire record excepting the Briefs filed by both parties to the Clerk of the United States Supreme Court upon request by the Clerk of the United States Supreme Court or the Justices thereof.

PART III. (C)

The following questions are presented by this appeal:

1. Did the trial court and the majority of the Supreme Court of the State of Georgia err in failing to hold unconstitutional Georgia Laws, 1943, page 538, as amended, Ga. Code Ann. §74-203, Ga. Code (3028), which states:

> "The mother of an illegitimate child shall be entitled to the possession of the child, unless the father shall legitimate him as before provided. Being the only recognized parent, she may exercise all the paternal power."

on the ground that said code section and statute violated the due process and the equal protection clause of the Fourteenth Amendment to the United States Constitution in that said statute creates an irrebutable presumption of unfitness to have partial custody on behalf of all unwed fathers and the Appellant?

2. Did the trial court and the majority of the Supreme Court of the State of Georgia err in failing to hold unconstitutional Ga. Code Ann. §74-403(3), Georgia Laws, 1941, page 300, as amended, which states:

> "Illegitimate children. -- If the child be illegitimate, the consent of the mother alone shall suffice"...

on the grounds that said statute is unconstitutional and repugnant to the due process and equal protection clause of the Fourteenth Amendment to the United States Constitution in that said statute creates the irrebutable presumption of unfitness on behalf of all unwed fathers without regard to their former parental responsibility and therefore, denies Appellant and all unwed fathers standing to object to the adoption of their natural, biological children?

Respectfully submitted this ___ day of _____, 1977.

WILLIAM L. SKINNER
Attorney for Appellant
Leon Webster Quilloin

Suite 485
One West Court Square
Decatur, Georgia 30030

(404) 377-0466

CERTIFICATE OF SERVICE

I, WILLIAM L. SKINNER, Attorney of Record for Leon Webster Quilloin, Appellant herein, depose and say that on the ___ day of _____, 1977, I mailed an accurate copy of the Notice of Appeal to the United States Supreme Court in this case to Appellees' attorney and to the Assistant Attorney General for the State of Georgia, by mailing to them by first class mail said Notice of Appeal to the following addresses:

Thomas F. Jones
Attorney at Law
1154 Citizens Trust Building
75 Piedmont Avenue, N. E.
Atlanta, Georgia 30303

Carol Atha Cosgrove
Staff Assistant Attorney General
132 State Judicial Building
Atlanta, Georgia 30334

This ___ day of _____, 1977.

WILLIAM L. SKINNER
Attorney for Appellant
Leon Webster Quilloin

Sworn to and Subscribed
before me this ___
day of _____,
1977.

Notary Public
Notary Public, [illegible], State at Large
My Commission Expires Aug. 31, 1980

Suite 485
One West Court Square
Decatur, Georgia 30030

(404) 377-0466

AFFIDAVIT OF SERVICE

I, WILLIAM L. SKINNER, pursuant to Rule 33(e)(c) of the Rules of the Supreme Court of the United States, do hereby depose and say under oath that I have served the opposing party with a copy of the foregoing Jurisdictional Statement by depositing same in the United States Mail with adequate postage thereon addressed to:

Thomas F. Jones
Attorney at Law
1154 Citizens Trust Building
75 Piedmont Avenue, N. E.
Atlanta, Georgia 30303

Arthur K. Bolten
Attorney General for the State of Georgia
by serving Carol Atha Cosgrove
Staff Assistant Attorney General
132 State Judicial Building
Atlanta, Georgia 30334

This 8th day of March, 1977.

William L. Skinner
WILLIAM L. SKINNER
Attorney for Appellant

Sworn to and Subscribed
before me this 8th
day of March,
1977.

Randal Sorgnard
Notary Public

Notary Public, Georgia, State at Large
My Commission Expires Aug. 31, 1980

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